

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAVID MATTHEW APPLEBY SR.,

Petitioner,

v.

WISCONSIN RESOURCE CENTER,

Respondent.

ORDER

08-cv-627-slc

Petitioner David Appleby is currently confined at the Wisconsin Resource Center in Winnebago, Wisconsin. On October 27, 2008, I entered an order in this case directing petitioner to submit a certified copy of his six-month resident account statement in support of his request for leave to proceed *in forma pauperis*. When I entered the October 27 order, I concluded that petitioner was a patient and as a result, he was not subject to the 1996 Prisoner Litigation Reform Act.

Petitioner has submitted a copy of his six-month trust fund account statement. However, it has come to my attention that I incorrectly determined petitioner's status as a patient. Consequently, I will correct the October 27 order to clarify that petitioner is a prisoner and is therefore, subject to the PLRA. This means that before this court may decide whether he can proceed with his complaint *in forma pauperis*, petitioner will have to make an initial partial payment of the filing fee and pay the remainder of the fee in monthly installments pursuant to 28 U.S.C. § 1915(b)(2).

From petitioner's statement, I have calculated his initial partial payment to be \$5.16. If petitioner does not have the money to make the initial partial payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. This does not mean that petitioner is free to ask prison authorities to pay *all* of his filing fee from his release account. The only amount petitioner must pay at this time is the \$5.16 initial partial payment. Before prison officials take any portion of that amount from petitioner's release account, they may first take from petitioner's regular account whatever amount up to the full amount petitioner owes.

ORDER

IT IS ORDERED that petitioner is assessed \$5.16 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$5.16 on or before December 5, 2008. If, by December 5, 2008, petitioner fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Further, IT IS ORDERED that the October 27, 2008 order is CORRECTED to state that petitioner is a prisoner and is subject to the PLRA. Upon petitioner's payment of the \$5.16 he has been directed to pay, the court will screen petitioner's complaint pursuant to 28 U.S.C. § 1915(e)(2) to determine whether the complaint or any portion of it must be dismissed as

frivolous or malicious, for failure to state a claim upon which relief may be granted or because petitioner is seeking damages from a defendant who is immune from such relief.

Entered this 18th day of November, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge